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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,285	09/11/2003	Randall S. Hickie	END-883NP	5322
27777	7590	05/04/2006	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			PARRIES, DRU M	
			ART UNIT	PAPER NUMBER
			2836	

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,285

Applicant(s)

HICKLE, RANDALL S.

Examiner

Dru M. Parries

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11-17-05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11, drawn to a battery backup system, classified in class 307, subclass 64.
 - II. Claims 12-15, drawn to a method of using a battery backup system, classified in class 307, subclass 86.
2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case (2) is true. The product, a battery backup system, can be used by a materially different process, such as the battery and the power source could be used simultaneously to supply power to a load during a peak power consumption time.

Because these inventions are distinct from one another for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Verne Kreger on April 24, 2006 a provisional election was made without traverse to prosecute the invention of the method of using a battery backup system, claims 12-15. Affirmation of this election must be made by the applicant in replying to this Office action. Claims 1-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

4. The drawings are objected to because the word "Maintain" is misspelled in box 75 of Fig.

3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mengelt (5,473,533) and Bachinski et al. (2003/0173828). Mengelt teaches a backup power system with a method of operation comprising supplying power via a main power source (AC line) (Col. 1, lines 60-62) and checking for disruptions of the main power source and supplying power via a battery if said disruption occurs (Col. 1, line 67; Col. 2, lines 1-2, 13-15). He also teaches switching back to the main power source if said disruption is resolved (Col. 2, lines 30-33). Mengelt fails to explicitly teach what type of load is being supplied with power via the backup power system. Bachinski teaches the idea of using backup power systems for supplying power to medical devices for those that are ill ([0003], lines 15-19). It would have been obvious to one of ordinary skill in the art at the time of the invention to have the load in Mengelt's invention be a medical device (i.e. sedation and analgesia system) since Mengelt was silent on this issue and Bachinski teaches a type of load used in this type of system.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mengelt (5,473,533) and Bachinski et al. (2003/0173828) as applied to claim 12 above, and further in view of Kawai (JP 2000-125484A). Mengelt and Bachinski teach a backup power supply system for a sedation and analgesia system as described above. They fail to teach sounding an alarm if said disruption occurs. Kawai teaches a backup power system where if the main power source is detected to be disrupted an alarm will sound (buzzer) ([0026], lines 1-4). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the alarm into Mengelt's invention so that the operator can be notified when the main power source has been disrupted.

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8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mengelt (5,473,533) and Bachinski et al. (2003/0173828) as applied to claim 12 above, and further in view of Faberman et al. (5,978,236). Mengelt and Bachinski teach a backup power supply system for a sedation and analgesia system as described above. They fail to teach checking the availability of the backup battery. Faberman teaches a backup power supply system with a backup battery wherein the voltage across the battery is monitored at all times to make sure enough voltage is available to supply to the load, and when not enough voltage is available to supply the load, the system is shut down (Col. 10, lines 28-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to check the backup battery for its availability to make sure that enough voltage is available when necessary to supply power from the battery to the load and to avoid interruption in the supply of power to the load.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dru M. Parries whose telephone number is (571) 272-8542. The examiner can normally be reached on Monday -Thursday from 8:00am to 5:00pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus, can be reached on 571-272-2800 x 36. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be

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obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DMP

4-25-2006



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